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Supreme Court of the United States

OCTOBER TERM, 1940

Nos. 381 and 382

Z. & F. ASSETS REALIZATION CORPORATION, a Delaware corporation; AMERICAN-HAWAIIAN STEAMSHIP CORPORATION, Intervener,

Petitioners,

v.

CORDELL HULL, Secretary of State and HENRY MORGENTHAU, Secretary of the Treasury; LEHIGH VALLEY RAILROAD COMPANY, Intervener,

Respondents

INTERVENER-RESPONDENT'S BRIEF IN OPPOSITION TO THE GRANTING OF WRITS OF CERTIORARI

WILLIAM D. MITCHELL,
Attorney for Respondent,
Lehigh Valley Railroad Company

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Opinions Below

The opinion below of the United States Court of Appeals for the District of Columbia (R. 335) has not yet been reported. That court unanimously affirmed an order of the District Court (R. 298) granting the motion of defendants Hull and Morgenthau (here respondents) to dismiss the complaint and the plaintiff-intervener's bill of intervention, and also granting the motion of the intervener-defendant Lehigh Valley Railroad Company (here also a respondent) for summary judgment dismissing the complaint and the plaintiff-intervener's bill of intervention.* The opinion of the District Court (R. 295) is reported in 31 F. Supp. 371.

* This brief is filed in opposition to the petitions in both No. 381 and No. 382. Both petitions seek a review of the same decision. Since the complaint and the plaintiff-intervener's bill of intervention sought identical relief, they are herein sometimes referred to as "the complaint".

Statement of the Case

On October 30, 1939, the Mixed Claims Commission, United States and Germany, granted awards to the United States on account of losses suffered by various corporations and individuals by explosions and fires caused by German sabotage at the Black Tom terminal in New York Harbor in July, 1916, and at the Kingsland, N. J., assembly plant in January, 1917 (R. 63, 107-08). The awards were filed with the Secretary of State, who certified them to the Secretary of the Treasury for payment to the claimants, pursuant to Section 2 of the Settlement of War Claims Act of 1928 (45 Stat. 254) as amended (R. 110-11).*

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* The pertinent provisions of Section 2 of the Settlement of War Claims Act of 1928 are as follows:

"Sec. 2 (a) The Secretary of State shall, from time to time, certify to the Secretary of the Treasury the awards of the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement of August 10, 1922, between the United States and Germany (referred to in this Act as the 'Mixed Claims Commission').

"(b) The Secretary of the Treasury is authorized and directed to pay an amount equal to the principal of each award so certified, plus the interest thereon, in accordance with the award, accruing before January 1, 1928.

"(c) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum per annum, upon the amounts payable under subsection (b) and remaining unpaid, beginning January 1, 1928, until paid.

"(d) The payments authorized by subsection (b) or (c) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the German special deposit account created by section 4, within the limitations hereinafter prescribed, and in the order of priority provided in subsection (c) of section 4."

This action was brought by petitioner Z. & F. Assets Realization Corporation for a declaratory judgment that the awards of the Commission were invalid and to enjoin the Secretary of the Treasury from paying the awards. The complaint also sought (too late) to enjoin the Secretary of State from certifying the awards. Petitioner American-Hawaiian Steamship Company intervened as a co-plaintiff.

Lehigh Valley Railroad Company, one of the beneficiaries of the Mixed Claims Commission's awards to the United States of October 30, 1939 (hereinafter sometimes called the "sabotage awards"), intervened on its own account and on behalf of the 152 other sabotage awardholders.

Petitioners hold awards previously made by the Mixed Claims Commission, on which payments in excess of the principal but insufficient to cover both principal and interest, have long since been received (R. 111). Not enough money is left in the German Special Deposit Account provided for in the Settlement of War Claims Act of 1928 to pay interest in full on all awards, unless Germany resumes payments on its bonds held by the United States to secure payment of all awards.* Petitioners claim that any payments on the sabotage awards would deplete the Account to their injury (R. 8).

Both the Secretary of State and the Secretary of the Treasury moved to dismiss on the ground that the court had no power to inquire into the validity of awards made by an international tribunal set up by two sovereign Governments dealing with controversies between the two Governments (R. 294).

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* Congress did not contemplate that payment in full of the awards would be made prior to 1953 (see Report of Senate Finance Committee, No. 273, 70th Cong., on Settlement of War Claims Bill, p. 5).

Lehigh Valley Railroad, after filing its answer (R. 33), moved for summary judgment dismissing the complaint on the grounds raised by the original defendants and *also* on the ground that, on the uncontested facts before the court, the awards were valid (R. 76).

Questions Presented

The issues presented, as variously described in the petitions, are properly divisible into two categories:

1. As both courts below held, the complaint presented a "political" (diplomatic) question properly for the State Department, which had acted,—a question not justiciable in the courts in that its determination would involve interference in the domain of foreign affairs by a direct determination of rights, liabilities and status of the United States and Germany under the Executive Agreement dated August 10, 1922 between the two countries (42 Stat. 2200), entered into pursuant to the Treaty of Berlin dated August 25, 1921 (42 Stat. 1939).

2. The questions which the courts below held to be not justiciable and, therefore, did not decide, although they were argued extensively before both courts, concerned the validity of the sabotage awards of the Mixed Claims Commission, United States and Germany, established pursuant to said Executive Agreement between the two countries. Petitioners' attacks on the awards of that Commission were based on three grounds, all of which Germany had previously urged in diplomatic exchanges with the Secretary of State and before the Mixed Claims Commis-

sion itself. Both the Secretary of State and the Commission rejected those contentions. They were:

(a) that the Mixed Claims Commission could not set aside its earlier decision of 1930 on these claims, adverse to the United States, even though the earlier decision had been induced by fraud and suppression of evidence on the part of Germany;

(b) that the wilful withdrawal of the German member of the Mixed Claims Commission, after the submission of evidence and briefs and oral argument and during the deliberations of the Commission on the claims, had made the Commission powerless to render a decision on the claims before it; and

(c) that the Canadian ownership of the stock of one of the awardholders, a New York corporation, made the award to the United States on behalf of that corporation invalid.

Treaties and Statutes Involved

The Knox-Porter Resolution (42 Stat. 105, 106), approved July 2, 1921, provided that all property of the German Government, and of its nationals, which, on or after April 6, 1917, had come into the possession or under control of the United States, should be retained by the United States

"until such time as the Imperial German Government * * * shall have * * * made suitable provision for the satisfaction of all claims * * * of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents * * *

since July 31, 1914, loss, damage, or injury to their persons or property * * *" (R. 79).

That Resolution was incorporated in the Treaty of Berlin of August 25, 1921 (42 Stat. 1939). Subsequently, an Executive Agreement between the United States and Germany was signed at Berlin on August 10, 1922 (42 Stat. 2200) providing for the creation of a Mixed Claims Commission to determine the amount to be paid by Germany to the United States in satisfaction of Germany's financial obligations under the Treaty to the United States on behalf of her nationals and on her own behalf (R. 15-18). The Commission was to consist of three members, one commissioner to be appointed by each Government and an umpire to be selected by agreement of the two Governments (Art. II). It was provided that the Umpire should

> "decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings" (Art. II)

and that

> "The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments" (Art. VI).

The parties before the Commission were the two Governments, United States and Germany (R. 18, 81-2). All claims presented to the Commission were made by the United States on its own behalf or on behalf of its nationals, and the conduct and control of the prosecution of such claims rested solely with the United States (id.).

The Settlement of War Claims Act of 1928 (45 Stat. 254)

> (a) created in the United States Treasury a German Special Deposit Account, composed in part of all sums invested or transferred by the Alien Property Custodian under the Trading with the Enemy Act, and of all money received by the United States in respect of claims against Germany on account of the awards of the Mixed Claims Commission; and
>
> (b) provided for certification of awards of the Mixed Claims Commission by the Secretary of State and directed the Secretary of the Treasury to make payment on awards so certified.*

Germany agreed to replenish the Special Deposit Account by payments on bonds which it deposited in the Treasury of the United States in a total principal amount of about $505,000,000 (at par of exchange) with maturities spaced over a period of 52 years (Debt Funding Agreement of June 23, 1930, 46 Stat. 500, Report of Secretary of Treasury 1930, pp. 341, 347, 354, 357). Germany has been in default on maturities of these bonds for a period of over five years (R. 43-4).

The Facts

The facts are set forth in detail in the affidavit of Harold H. Martin, the representative of the United States Government before the Commission (R. 77-112). Petitioners' statements of them make it necessary to outline briefly the background of the case.

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* The relevant language of the Statute with respect to certification and payment is quoted *supra*, p. 2.

The Proceedings Before the Commission From 1930 to 1939

In a decision rendered on October 16, 1930, the Commission found that, although Germany had authorized sabotage in this country, the United States had not proved Germany's responsibility for the destructions at Black Tom terminal and Kingsland (R. 261-264). Immediately after the formal announcement of that decision, the Agent of the United States sought a rehearing of the cases (R. 85) and practically continuously from that time to the final decision on October 30, 1939, the sabotage cases were in active litigation before the Commission.

After intermediate petitions for rehearing based on other grounds had been denied (R. 85-8), a petition was filed on May 4, 1933, to reopen the cases on the ground that the decision of 1930 and a subsequent decision of 1932 had been obtained by fraud (R. 115-121). Conflicting opinions as to the right of the Commission to reopen were expressed by the two national Commissioners (R. 121-134). The German Ambassador informed the State Department that his Government took the position that the Commission had no power even to consider the question of reopening (R. 123-124). The State Department took the position that the question was one for the Commission to decide, and should be referred to the Umpire (R. 123), which was done. Under date of December 15, 1933, in a decision rendered by the Honorable Owen J. Roberts as Umpire, the Commission held that it had power to reopen the cases and "either confirm the decisions heretofore made or alter them as justice and right may demand" (R. 45-59). In 1934 the two Governments agreed, by formal exchange of notes, that the sabotage claims were still pending before the

Commission (R. 135-37). Additional evidence was filed by both Governments and extended argument was had before the Commission. Thereupon, on June 3, 1936, the Commission *unanimously* (the German Commissioner participating) set aside its earlier decision of December 3, 1932, also rendered by Mr. Justice Roberts as Umpire, dismissing an earlier petition for rehearing (R. 138-140).

The 1939 Decisions and Awards of the Commission.

After an interval of a year resulting from a request for adjournment on the part of Germany,* more witnesses were examined and additional evidence was filed by the Agents of both Governments (R. 95-8, 158). In January, 1939, the cases were again argued at length before the full Commission (R. 96). In his brief and again at the close of the hearings in January, 1939, the American Agent requested not only that the cases be reopened but that the Commission render a final decision on the merits (R. 96-8). The Commission thereupon entered upon its deliberations, during the course of which the Umpire and the American Commissioner each expressed the view that the decision of October 16, 1930, had been induced by fraud in the evidence presented by Germany (R. 60). The Commission then proceeded, at the specific request of the German Commissioner, to determine whether, in the record as it then stood, there was sufficient proof of Germany's responsibility

* The interval was consumed in settlement negotiations requested by Germany (R. 141-42) resulting in an agreement of settlement at Munich covering the sabotage cases. The German Agent, however, declined to effectuate that agreement before the Commission (R. 96).

to justify setting aside the 1930 decision (R. 60, 103, 149-50). In the course of that investigation, the German Commissioner, finding that the Umpire held views contrary to his on the questions of fraud and of Germany's responsibility for the explosions, retired as a member of the Commission in an attempt to avoid a decision adverse to Germany, and thus frustrate the work of the Commission (R. 145-52, 159, 217, 290-91).

Personal notice was given to the German Agent of a meeting of the Commission to be held on June 15, 1939 (R. 99). In response to this notice, and prior to said meeting, Germany stated through announcements made both by its Agent and by its diplomatic representative that it would ignore the meeting (R. 99, 100).

At the June 15, 1939, meeting of the Commission, the Umpire announced his decision setting aside the decision of October 16, 1930, reopening the cases, and finding, on the record as it then stood, that the liability of Germany for both explosions had been established (R. 59-62). The American Agent thereupon moved again for the entry of awards in favor of the United States (R. 105-06). That motion was granted and the order entered thereon provided that the awards would be considered at a further meeting to be held on notice (R. 106). No request was or has been made by Germany to introduce any additional evidence.

Pursuant to the order of June 15, 1939, the Commission met on October 30, 1939, again after personal notice to the German Agent (R. 179-80) and after a thorough study of the records and proof on file relating to damages (R. 107). At that October meeting, awards in favor of the United States in each of

the 153 sabotage claims growing out of the two explosions were granted by the Commission (id.).

At that same October meeting the Commission also disposed of the only other case pending before it by dismissing the claim. With the disposal of that case and the granting of the sabotage awards, all the cases which the two Governments, by the exchange of notes dated May 7, 1934, had agreed were the only cases pending before the Commission (R. 135-137), were determined (R. 112).

Nationality of One of the Awardholders

One of the awards entered on October 30, 1939, was in favor of the United States on behalf of Agency of Canadian Car & Foundry Company, Ltd., a New York corporation, whose offices, business and property were located in the United States. The claim on behalf of this corporation was based upon the destruction by German sabotage agents of its plant at Kingsland, New Jersey. All of the stock of the New York corporation, as had been disclosed to the Department of State, to the Commission and to Germany many years prior to the entry of the award, was owned by a Canadian corporation, part of whose stock was owned by American nationals and part by nationals of other countries (R. 185-86). In 1936 the German Agent moved to dismiss the claim on the theory that the New York corporation was not an American national within the meaning of the Executive Agreement of August 10, 1922 (R. 183). Prior to the retirement of the German Commissioner, both the German Agent and the American Agent had submitted briefs directed to this motion (R. 183). The Umpire in his decision of October 30, 1939, held that Agency of

Canadian Car & Foundry Company, Ltd. was an American national within the meaning of the Executive Agreement of August 10, 1922, and denied the motion of the German Agent (R. 195).

Petitioners' Attacks on the Awards Were Considered and Rejected by Both the State Department and the Mixed Claims Commission.

(a) Germany had contended (and petitioners take the same position) that even if the Commission's 1930 decision in the sabotage cases had been obtained by fraud and suppression, there was nothing that the Commission or Umpire could do about it. The position taken by the Secretary of State on this contention, stated in his communication of October 19, 1933, was that the Commission had the power to determine its own jurisdiction in this respect.* The decision of the Commission rejecting the German contention was rendered by the Umpire on December 15, 1933 (R. 45-59).

(b) When the German Commissioner, aware that the other two members intended to sustain the charges of fraud and to reopen the case and that they

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* "It is the view of the Department that the question whether the Commission has jurisdiction to entertain petitions for rehearing is one properly to be decided by the Commission itself. It is understood that the American and German Commissioners hold divergent views on this question and that in a normal course of procedure, under the claims agreement and the rules of procedure adopted by the Commission, the matter would be submitted to the Umpire for decision.

"It is desired that you promptly bring this communication and its enclosure to the attention of the American Commissioner or the full Commission, as in your judgment may seem proper, for the purpose of obtaining the decision of the Umpire on this disputed point" (R. 89-90).

were convinced that Germany was responsible for the explosions, retired for the purpose of preventing such decision, the German Government claimed that no decision could be rendered without him. Prior to the Commission's decision of October 30, 1939, and to the Secretary of State's certification of the awards on October 31, 1939, both the Commission and the Secretary had been repeatedly apprised of this position by the German Embassy (R. 153-54, 291-94, 195-216) and by one of petitioners (R. 307-11). Both the Umpire and the Secretary of State rejected such contentions. The Secretary of State in his letter of October 18, 1939, to the German Charge d'Affaires said:

> "I have entire confidence in the ability and integrity of the Umpire and the Commissioner appointed by the United States despite your severe and, I believe, entirely unwarranted criticisms, and I am constrained to invite your attention to the fact that the remarkable action of the Commissioner appointed by Germany was apparently designed to frustrate or postpone indefinitely the work of the Commission at a time when, after years of labor on the particular cases involved, it was expected that its functions would be brought to a conclusion" (R. 217).

(c) The litigation before the Commission and its decision on the question of the nationality of Agency of Canadian Car & Foundry Company have been described (*supra*, page 11). The State Department had the facts before it when it originally espoused the claim (R. 185-86) and Germany and one of petitioners raised the question before the Department again in 1939 prior to the Secretary of State's certification of the awards (R. 207-08, 314-15).

Thus, all questions which petitioners seek to have the domestic courts review

> (i) involve interpretation of the Executive Agreement of August 10, 1922, between the United States and Germany in order to decide the powers therein granted to the Mixed Claims Commission which that Agreement established to determine questions in dispute between the two sovereign Governments;
>
> (ii) have been determined by said Commission in litigation between the United States and Germany, which had agreed that the Commission's decisions should be "final and binding"; and
>
> (iii) have been dealt with by the Secretary of State, with full knowledge of the alleged defects in the Commission's decisons, in conducting the relations of this country with Germany.

Finally, the Secretary of State has accepted the awards of the Commission and, by certifying them to the Secretary of the Treasury for payment, has completed the final act required of him under the Settlement of War Claims Act of 1928.

Reasons Why the Writs Should Not Be Granted

The petitions present neither any conflict of authority nor any doubtful or important question of general law requiring further decision of this Court.

(1) The District Court and the Court of Appeals decided that no justiciable question was presented by the petitioners. These decisions are in accord with an unbroken line of decisions of this Court from the earliest days, followed by the lower Federal and

State courts and approved by the text writers. No authority for judicial interference with the executive department's conduct of foreign relations (the necessary result of granting the petitions) has been cited by petitioners.

(2) If determination of the question were within the bounds of proper judicial action and this Court were to consider the validity of the sabotage awards, it would find the precedents overwhelmingly in support of their validity as against all three grounds petitioners seek to raise.

(3) All the challenges to the validity of the sabotage awards were placed before the Mixed Claims Commission and the State Department by Germany and by one of petitioners. The petitioners claim only through the United States, a party to the litigation before the Commission, and the decisions of the Mixed Claims Commission, accepted by the State Department, may not be collaterally attacked by petitioners.

(4) Petitioners' attempts to obtain judicial interference with the Executive Department should not be encouraged by further judicial review. The sabotage claims have been in litigation for sixteen years and only further delay at the expense of the sabotage awardholders would result from granting the writs.

Argument

POINT ONE

The validity of the awards of the Mixed Claims Commission is not subject to judicial review.

Our courts have consistently refrained from inquiry into the question whether a treaty has been violated by the legislative or executive branch of the Government to the damage of an individual, where such inquiry would trespass on the conduct of this country's foreign relations. See *Ware* v. *Hylton*, 3 Dall. 199, 260 (1796); *Whitney* v. *Robertson*, 124 U. S. 190, 193-195 (1888); *Botiller* v. *Dominguez*, 130 U. S. 238, 247 (1889); *George E. Warren Corporation* v. *United States*, 94 F. (2d) 597 (C. C. A. 2d, 1938), cert. den. 304 U. S. 572; and cf. *Rustomjee* v. *The Queen* [1876-77] 2 Q. B. D. 69, 74.

Certain types of treaties, such, for example, as extradition treaties, directly affect or create rights of individuals, and, when they become domestic law under the Constitution, may be interpreted by the courts, at the suit of individuals, so long as there is no interference with the conduct of foreign relations. But this agreement for arbitration is not of that type. It is an international compact to provide awards to the United States for violation of its neutrality. Only the Governments are parties before the Commission. Every claimant derives what rights he has from and under the United States.

Even in extradition cases, courts refuse to consider questions of foreign relations within the State Department's domain. *Terlinden* v. *Ames*, 184 U. S. 270 (1902); and *Charlton* v. *Kelly*, 229 U. S. 447 (1913).

The opinion of the Court of Appeals for the District of Columbia in the instant case is so complete and its citation of authorities so exhaustive that it leaves little more to be said on this point. We have found no case, and the petitioners cite none, in which any court has even suggested that it had power, in the absence of specific legislation, to pass upon the validity of an award of an international tribunal adjudicating disputes between nations.

Mr. Justice Miller reviews the numerous cases in this Court holding that the judicial branch will not interfere in political controversies and that questions arising between nations in the conduct of foreign relations are political "questions" with which the courts of both this country and England have refused to deal from early times (R. 341-51).*

Likewise, the opinion below properly lays emphasis on the fact that in this case not only did the Mixed Claims Commission pass on the questions as to its powers, *but our State Department, in diplomatic controversy with the German Government, has taken a position on them contrary to that which petitioners ask this Court judicially to declare* (see *supra*, pages 12 to 14). Finally, the State Department, with all the objections to the same awards before it which petitioners seek to raise, certified the awards to the Secretary of the Treasury for payment.

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* See also *Coleman* v. *Miller*, 307 U. S. 433, at 454-455, 457, 460 (1939); *West Rand Central Gold Mining Company, Ltd.* v. *The King* [1905] 2 K. B. 391; Crandall, Treaties, Their Making and Enforcement (Studies in History, Economics and Public Law, Columbia University, Vol. 21, No. 1, 1904) p. 221; and Potter, The "Political" Question in International Law in the Courts of the United States, VIII Southwestern Political and Social Science Quarterly 127 (1927).

The provision of the Settlement of War Claims Act of 1928 that awards shall be paid only when certified to the Treasury by the Secretary of State is a legislative recognition of the fact that the acceptance or rejection by the United States of awards is a question for the executive branch entrusted to the Department of State. The Secretary of State had full power and authority to reject the awards if they had been invalid. *Frelinghuysen* v. *Key,* 110 U. S. 63 (1884); *Boynton* v. *Blaine,* 139 U. S. 306 (1891); and *La Abra Silver Mining Co.* v. *U. S.,* 175 U. S. 423 (1899). . . .

The Executive Agreement of August 10, 1922, was an international compact to provide the machinery for determining claims of the United States respecting certain acts committed by the German Government. As stated by Secretary of State Frelinghuysen with reference to a similar tribunal:

> "The Commission is not a judicial tribunal adjudging private rights but an international tribunal adjudging national rights" (Moore; VI Digest Int. Law, §1055, pp. 1015-6).

See also (with specific reference to the Mixed Claims Commission, United States and Germany) *Standard Marine Insurance Co.* v. *Westchester Fire Insurance Co.,* 19 F. Supp. 334, at p. 338 (S. D. N. Y. 1937), aff'd 93 F. (2d) 286 (C. C. A. 2nd, 1937); cf. *U. S.* v. *Bayard,* 127 U. S. 251, 259 (1888); *U. S.* v. *Dickelman,* 92 U. S. 520, 524 (1875); Distribution of Alsop Award by the Secretary of State, Opinion of the Solicitor for the Department of State, J. Reuben Clark, Jr., Aug. 14, 1912 (Wash., Govt. Printing Office, 1912) p. 14.

Petitioners, as they did below, seek support in the line of cases dealing with conflicts over asserted rights to receive payment of an award, arising between original claimants and those claiming under them, or between two or more persons whose rights are derivative and who claim through assignments or transfers—disputes as to the proper person entitled to the money on payment of a successful claim.*

As both courts below pointed out, no such question is involved in this litigation (R. 298, 350-51). The determination of the proper person entitled to the proceeds of a particular award, once the United States has established a claim, presents no complication involving the executive department's action or power in international affairs and is a matter of domestic law for the local courts. This case would be comparable to those cited were petitioners alleging that they owned Black Tom Island when German sabotage agents destroyed it in July, 1916.

Petitioners' characterization of the instant controversy as "a contest between adverse American claimants to share in a fund created by an act of Congress" (No. 381, p. 3) and as "a conflict of property rights under the statutes and treaties of the United States" (No. 381, p. 16) tends to obscure the real nature of their claim. Petitioners concededly have an interest

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* *Orinoco Co.* v. *Orinoco Iron Co.*, 296 Fed. 965 (App. D. C., 1924), aff'd *sub nom. Mellon* v. *Orinoco Iron Co.*, 266 U. S. 121 (1924); *Houston* v. *Ormes*, 252 U. S. 469 (1920); *Comegys* v. *Vasse*, 1 Peters 193 (1828); *Frevall* v. *Bache*, 14 Peters 95 (1840); *Judson* v. *Corcoran*, 17 How. 611 (1855); *Williams* v. *Heard*, 140 U. S. 529 (1891); *Matter of Westbrook*, 228 App. Div. 549 (N. Y. 1930). See also *Doerschuck* v. *Mellon and Z. & F. Assets Realization Corp.*, 55 F. (2d) 741 (App. D. C., 1931).

in the German Special Deposit Account in that, to the extent that funds may be available; and subject to the rights of other awardholders and to the conditions of the Act relating to priorities among the various classes of claims, they are entitled to the payment of their awards out of such Account. Without such interest, they would have no standing whatever; for any reason, to challenge the legality of a proposed disbursement from the Account by the Secretary of the Treasury. It does not follow, however, that the existence of an interest which could properly be accorded judicial protection upon grounds afforded by the Act, authorizes judicial inquiry into all other matters which might conceivably affect that interest.

If the basis of petitioners' complaint were that the Secretary of the Treasury was about to make a payment from the Account in respect of an award which had not been certified by the Secretary of State and thus accepted by the United States (as required by the Settlement of War Claims Act), or that the amount of a proposed payment did not conform to the provisions of the Act prescribing the priorities of payment, a different question would be presented. But no such complaint is made here.

The matters of which petitioners do complain relate to the validity of the awards and the proper interpretation of the Treaty and Agreement pursuant to which the Commission was created. The German Special Deposit Account comprises moneys received by the United States from Germany to satisfy Germany's financial obligations assumed under the Treaty of Berlin. The two Governments established (and Congress recognized) the Mixed Claims Commission as the tribunal to decide the

extent of those obligations. These were matters in dispute between the two Governments, not between American citizens and Germany. The propriety of the acceptance by the United States of the Commission's action is no more judicially reviewable than would have been the rejection of the awards by the United States, or an agreement between the two Governments, prior to the granting of the awards, that the claims on which they were based should be dismissed.

To grant the relief sought by petitioners, this Court would have to place itself in square conflict with the State Department in an actual, not merely a potential, controversy with a foreign government respecting the interpretation and effect of an international agreement.

The decision below is not in conflict with that of any other Circuit, is upon a question already settled by this Court, is not in conflict with, indeed it follows, applicable decisions of this Court, and it presents none of the grounds for certiorari specified in Rule 38 of the Supreme Court Rules.

POINT TWO

The awards were valid and the Mixed Claims Commission acted within its powers.

Although the courts below rested their judgments on unassailable grounds, it is appropriate to call attention to other points raised below and presented by the record, which would require an affirmance of the judgment if this Court should examine into the validity of the sabotage awards.

Those points are as follows:

1. *The Commission had power to reopen the cases after its prior decision rejecting the claims.*

The cases were reopened not because of occasional perjury of witnesses for Germany, but on proof that the entire defense was corrupt and that the perjury and suppression of facts were organized by responsible officials of the German Government.

Respecting the power of the Commission to reconsider a decision procured by such means, we refer to the convincing opinion of the Umpire rendered December 15, 1933 (R. 45-59). That opinion concludes with this statement:

> "The petition, in short, avers the Commission has been misled by fraud and collusion on the part of witnesses and suppression of evidence on the part of some of them. The Commission is not *functus officio*. It still sits as a court. To it in that capacity are brought charges that it has been defrauded and misled by perjury, collusion, and suppression. No tribunal worthy its name or of any respect may allow its decision to stand if such allegations are well-founded. Every tribunal has inherent power to reopen and to revise a decision induced by fraud. If it may correct its own errors and mistakes, *a fortiori* it may, while it still has jurisdiction of a cause, correct errors into which it has been led by fraud and collusion.
>
> "I am of opinion, therefore, that the Commission has power to reopen these cases, and should do so, in order that it may consider the further evidence tendered by the American Agent and, dependent upon its findings from that evidence

and any that may be offered in reply on behalf of Germany, either confirm the decisions heretofore made or alter them as justice and right may demand."

At one time, when a question of reopening these cases was argued, the German Agent conceded that the Commission had power to decide the question of its own jurisdiction (R. 87-8).

Germany, when she found that the question was to be decided against her, attempted to deny the power of the Commission to settle the question for itself. She first conceded the point, but her later position was in substance that the Commission had jurisdiction to decide on its power to reopen, provided it was decided in accordance with the German contention, but not otherwise.

Nevertheless, after the law point was settled in 1933, Germany acquiesced (R. 135-37) and continued for over five years actively to litigate the claims (R. 95-7, 157-58).

The Commission has repeatedly reopened and corrected its prior decisions in other cases (R. 93-4) and by the decision of June 3, 1936, in these cases, in which the German Commissioner concurred, the Commission set aside its prior decision of December 3, 1932 (R. 138-40).

Petitioner in No. 381 attempts to distinguish this case from other cases in which the Commission reopened and altered its earlier decisions on the ground that in such other cases the Agents of both Governments consented to the reopening (Brief in No. 381, p. 37). That distinction does not, of course, apply to the decision of June 3, 1936, and does not constitute a valid distinction in any case. The Umpire

answered petitioner's argument when Germany so argued in 1933. He pointed out that additional power could be conferred upon the tribunal only by the parties which called it into being and, therefore, if a case might be reopened by consent of the national Agents, the same action could be taken without their consent (R. 56).

We know of no case—and petitioners have cited none—where it has been held that a commission was without jurisdiction to consider a petition for rehearing properly presented to it while it was continuing to function as a judicial body. The argument that it cannot do so, even to correct fraud, is unconscionable and would pervert both justice and the intention of the parties.

The cases relied upon by petitioner (Brief in No. 381, pp. 34-38) do not support the proposition for which they are cited. All such cases were cited to the Commission in the brief filed in 1937 on behalf of a group of similarly situated awardholders, and their inapplicability was then pointed out.

Thus the *Cerruti* case (5 Moore, International Arbitrations, p. 4699) involved a submission to Grover Cleveland, as President of the United States, of a claim of Italy against Colombia. President Cleveland's award was rendered two days before his term of office expired and the "protest" by the Colombian government—which was *not* a petition for rehearing—was filed with the Secretary of State in the McKinley administration.

In the *Claim of Manuel de Cala* (2 Moore, International Arbitrations, p. 1273), the application for review was made, not to the tribunal which had rendered the decision, an international commission, but

to a separate domestic commission which had come into existence eight years after the international commission had ceased to function. No application was ever made to the international commission to review its own decision.

Similarly, in the *Claim of Benjamin Weil* (2 Moore, International Arbitrations, p. 1324), the application for a rehearing was made nine months after the national commissioners had concluded their labors and had so announced. The application was presented, not to the two commissioners, but in the first instance to the umpire, who continued to function solely for the purpose of deciding cases before him in which he had not then rendered opinions. The terms of the submission by the two Governments in creating the Commission had specifically provided that "from and after the conclusion of the proceedings of the Commission" the decision would be "considered and treated as finally settled, barred, and thenceforth inadmissible" (Art. V of the Claims Convention of 1868 with Mexico, Malloy, Treaties, p. 1131). The same commission had earlier recognized its power, while it still sat, to reopen cases by reversing its former ruling in the *Claim of Henry S. Schreck* (Sir Edward Thornton, Umpire).*

Additional instances in which commissions have reopened cases where the provisions respecting the final and binding character of the decisions were at least as strong as they are in the present case can readily be cited. For example, *Bouillotte's* case, French Commission of 1880 (3 Moore, Interna-

* This appears from the reference to this claim in the case of *Young, Smith & Co.*, 3 Moore, International Arbitrations, pp. 2184, 2186, as well as from the MSS Records of the Department of State.

tional Arbitrations, pp. 2650-52. MSS Records, Dep't of State); *Claim of F. M. de Acosta y Foster* (Spanish Commission of 1871) (3 Moore, International Arbitrations, pp. 2187-88, MSS Records, Dep't of State), where the decision was twice reopened, once with consent and once without consent; *C. H. Campbell,* No. 94, and *A. A. Arango* v. *Spain,* No. 95 Spanish Commission of 1871 (MSS Records, Dep't of State).

That other commissions—like the Mixed Claims Commission—have often refused to grant rehearings in particular cases does not indicate any lack of *power* to grant a rehearing under appropriate circumstances, such as when fraud is shown.

2. *The withdrawal of the German Commissioner did not deprive the Umpire and American Commissioner of power to dispose of the cases.*

On March 1, 1939, the German Commissioner, after having sat during seventeen days of argument in 1936 and ten days in 1939, and after the case was submitted and the Commission had been engaged in its deliberations for some three weeks, suddenly announced his retirement.

That he did so after learning the decision was going against Germany and in order to frustrate the arbitration, is clear (R. 145-52, 159, 217, 290-91). The German Commissioner himself stated that the reason for his retirement was his conviction that the Umpire had reached a conclusion and was no longer open-minded (R. 145-47).

The authorities are settled that such attempt to frustrate the arbitration was unavailing and did not

prevent the Umpire and the American Commissioner from disposing of the cases. *Republic of Colombia* v. *Cauca Company,* 190 U. S. 524 (1903); *American Eagle Fire Ins. Co.* v. *New Jersey Ins. Co.,* 240 N. Y. 398, 148 N. E. 562 (1925); *Grand Rapids Ry. Co.* v. *Jaqua,* 115 N. E. 73 (Ind. 1917); *Atchison, Topeka & Santa Fe Ry. Co.* v. *Brotherhood,* 26 F. (2d) 413 (C. C. A. 7th, 1928); *State* v. *Tucker,* 166 N. W. 820 (N. D. 1918); *Sturges, Commercial Arbitrations and Awards* (1930), pp. 427-428, and cases there cited; *Burtlet* v. *Smith,* 94 Eng. Rep. 587 (King's Bench, 1734); *Dalling* v. *Matchett,* 125 Eng. Rep. 1138 (Common Pleas, 1740). Set also Circuit Judge Goff's apt characterization of the Colombian Commissioner's attempt to scuttle his commission in the *Colombia* v. *Cauca* case, equally apt here (106 Fed. 337, at 348-49, aff'd 190 U. S. 524).

The opinion of the American Commissioner (R. 154-79), adopted by the Umpire in his decision of June 15, 1939 (R. 60), reviews such authorities in detail.

Those cases, concerning private arbitrations, generally deal with situations where the resignation of an arbitrator took place after all proofs and arguments had been presented. But *Toledo S. S. Co.* v. *Zenith Transp. Co.,* 184 Fed. 391 (C. C. A. 6th, 1911), held that an arbitral tribunal, justified in determining the merits of a claim despite withdrawal of one of the arbitrators, may thereafter proceed to determine the question of damages.

In the instant case the only question which had not been argued prior to the retirement was the damage question. All the evidence on damages had been filed years earlier (R. 108). The agreement of the American Agent eleven years before that briefs then

filed should be restricted solely to the question of Germany's liability (R. 84) has no bearing on the case. Between the decision of June 15, 1939, and the entry of the awards on October 30, 1939, during which period the Commission considered the question of the amount of damages (R. 107) (and indeed substantially reduced the claims), Germany had ample opportunity to argue the question of damages. Germany's refusal to participate as a litigant cannot avail the petitioners.

The questions presented to the Commission for its decision prior to the retirement of the German Commissioner included:

> (a) the question whether the United States had proved German fraud sufficient to require a reopening of the cases (R. 102);
>
> (b) the question whether, on the record as it then stood, the United States had made out its case on the merits (R. 60-2, 96-8, 103, 158-59, 290);
>
> (c) the question of the nationality of Agency of Canadian Car & Foundry Company (R. 182-84, 195); and
>
> (d) the question whether a final decision on the merits should be made (R. 97, 98).

When the Commission (after the German Commissioner's resignation) on June 15, 1939, rendered its decision reopening the case and setting aside the former decision, it made a finding, *on the record as it stood,* that Germany had caused the explosions. That finding was in direct response to the insistence of the German Commissioner that the point be examined, as it would be futile to reopen if the United States

had not made a case on the merits (R. 60, 105-06). From 1933 to 1939 both Governments had filed voluminous evidence relevant to the essential merits of the claims (R. 61, 97). That finding, *on the record as it stood,* left Germany free to supplement the record with further proof. She refused to appear further, and on the record there was nothing for the Commission to do but determine damages, which it did.

As Secretary of State Evarts stated with respect to the American-Spanish Commission, convention of February 1871,

> "[It is] beyond the competence of either government to interfere with, direct or obstruct its deliberations." (3 Moore, International Arbitrations, p. 2599 and MSS Notes of the United States to the Spanish Legation.)

Mr. John Bassett Moore, who now is named as counsel for one of the petitioners, when commenting on the question of the right of withdrawal in connection with the arbitration which took place under the Jay Treaty of 1794, said:

> "* * * On the other hand, it can hardly be supposed that the governments, in agreeing to Articles VI and VII, had it in mind to create a device by which either of them, or the commissioner named by either of them, might by withdrawing, readily prevent the majority of a duly constituted board from exercising its constitutional powers.
>
> * * * * * * * * *
>
> "As the claim of a right to withdraw cannot reasonably be deduced from the terms of the treaty, so likewise is it unjustified under interna-

tional law. Its justification in the present instances, whether at London or at Philadelphia, must, therefore, be sought in moral rather than in legal considerations." (3 Moore, International Adjudications, Modern Series, p. 170.)

Under all the authorities, including those applying even to private arbitrations, the attempted frustration was ineffective.

There is another clear ground for holding that Germany could not frustrate the arbitration by withdrawing her Commissioner.

(i) The Knox-Porter Resolution, approved July 2, 1921 (42 Stat. 105-6) provided that all property of Germany and its nationals in possession of the United States should not be returned until such time as Germany had made "suitable provision" for satisfaction of claims of American nationals.

(ii) The substance of the resolution was embodied in the Treaty of Berlin of August 25, 1921 (42 Stat. 1939).

(iii) The Executive Agreement of August 10, 1922 (42 Stat. 2200) establishing the Mixed Claims Commission, was the "suitable provision" referred to in the Treaty of Berlin.

(iv) The Settlement of War Claims Act of 1928 (45 Stat. 254), which provided for the return to Germany of seized property, was *enacted in reliance upon the fact that the Commission had been established and that Germany could not by its own act prevent action by the Commission.* The Hearings before the Senate

Finance Committee, 70th Congress, H.R. 7201, January 23-26, 1928, pp. 134-9,191-5, disclose that a representative of this same respondent Lehigh Valley Railroad Company (with remarkable foresight as events have proved) appeared and objected to the return of German property until the Mixed Claims Commission had decided the sabotage cases. He feared that, if German property was first returned, Germany would by some device disrupt the Commission and prevent sabotage awards. Impressed by this argument, the Senate Committee called in Judge Parker, then Umpire of the Commission, and questioned him as to what the Commission could do if Germany declined to appear before a decision could be rendered in the sabotage claims. Judge Parker stated that the Commission could proceed to decide the cases even if Germany went so far as to refuse to appear or submit any testimony (R. 83-4). Furthermore, the record of the hearings contains letters to the Committee written by representatives of the German Government, insisting that it was unthinkable that Germany would endeavor to disrupt the Commission. Satisfied by these representations, the bill was favorably reported and passed.

(v) Since its passage more than $175,000,000 of German property has been returned, in reliance on the continued functioning of the Commission. Under these circumstances, having received benefits under the Settlement of War Claims Act, Germany could not at any stage thereafter frustrate proceedings before the Commission.

Petitioners' Attacks on Commission Procedure

Petitioners argue (Brief in No. 381, Pt. IV) that the question of the merits of the claims was not properly before the Commission because the original application filed in 1933 sought only a rehearing. They therefore assert that the Commission granted the awards without affording adequate opportunity to Germany to litigate the merits of the claims.

The argument disregards the facts that the merits of the claims had been exhaustively tried and argued before the Commission, that both sides had filed thousands of pages of evidence dealing directly with the merits and that the American Agent had repeatedly requested the Commission to render a finding on the merits upon the ground that once a decision had been rendered on the issue of fraud, any other proceedings would be a mere formality (R. 96-8). In January, 1939, the American Agent moved again for such a ruling just prior to the submission of the case to the Commission (R. 97-8).

Furthermore, as pointed out by the American Agent, the claimed distinction between fraud and merits in this case was unreal—a fact which had become increasingly evident as the cases proceeded. The same evidence was relevant to both. For example, one of the questions in the so-called fraud issue was the authenticity of a certain secret message, which was eventually found to be genuine. But the Commission in 1932 had stated that the message, if authentic, was conclusive on the question of liability (R. 120).

Petitioners' attempt to create the impression that the remaining members of the Commission acted hastily and without adequate consideration is wholly

unjustified. Although the blunt letters from the German Agent and the German Charge d'Affaires presumably made it unnecessary to notify the German Agent of further meetings (R. 99, 100, 195-216, 291-94), in fact the Commission gave him personal notice both of the meeting of June 15, 1939 and of the meeting of October 30, 1939. The German Agent failed to appear at either meeting, notwithstanding Germany was well aware of the fact that awards in favor of the United States were under consideration (R. 196).

Both the Umpire and the American Commissioner proceeded with the utmost care and consideration for the rights of Germany after the retirement of the German Commissioner. At the meeting of June 15, 1939, although the circumstances amply justified the decision finally disposing of the cases, the decision handed down by the Umpire at the opening of the meeting was confined to the granting of the petition for a rehearing and the finding of fact (requested by the German Commissioner) whether, on the record as it then stood, the United States had made out its case on the merits (R. 59-60). It was only after the Commission had so found and after Germany's intention not to file further evidence had become apparent that the Umpire granted the motion of the American Agent to direct the entry of awards in favor of the United States (R. 105-06). The order entered on June 15, 1939, provided, in part, as follows:

> "* * * the American Agent is directed to prepare and submit to the Commission for its approval awards in each of the pending sabotage claims. These awards will be considered at a further meeting of the Commission to be called

on notice, and appropriate action thereon will then be taken" (R. 106).

Petitioners' other argument that the German Commissioner's attempted frustration was effective is based on the premise that the national Commissioners were not in disagreement or "at a point of difference" in their deliberations.* The Umpire himself, who was present at all hearings, found that such a disagreement existed (R. 59-60).

With regard to the argument based on the fact that the German Commissioner did not sign the certificate of disagreement, petitioners rely upon a rule adopted by the Commission for the convenience of the Umpire. It is clear that no rule of procedure adopted by a tribunal can enlarge or restrict the jurisdiction of that tribunal. *Washington-Southern Navigation Co.* v. *Baltimore & Philadelphia Steamboat Co.*, 263 U. S. 629 (1924).

It should also be noted that the general rules of the Commission were substantially modified by the special rules for the conduct of the sabotage cases and the unbroken practice of the Commission in sitting and deliberating as a three-man body in all proceedings connected with all important cases of the Commission (R. 84, 85-6). See also Report of American Commissioner, Mixed Claims Commission, December 30, 1933, U. S. Gov't Printing Office (1934), pages 7-8.

The Umpire's power to proceed without a certificate of disagreement signed by both Commissioners has been settled since Umpire Robert's decision of December 15, 1933, which dealt with the point and

* The Executive Agreement of August 10, 1922 provides: "The two Governments shall by agreement select an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings" (R. 16-7).

was never questioned by either Government (R. 50-52). Plaintiffs' contention would lead to the absurd result that the Umpire, even though he was present and witnessed the disagreement (as he did here), could never decide a point in dispute unless the German Commissioner consented in writing that he should.

Furthermore (see pages 30 and 31 of this brief) Germany, having had property returned to her or her nationals under the Settlement of War Claims Act passed in reliance on her continued participation in this arbitration, could not frustrate the arbitration by refusing or failing to sign a certificate of disagreement or by withdrawing her Commissioner so that a disagreement could not occur.

3. *Agency of Canadian Car & Foundry Company is an American national within the meaning of the Executive Agreement of August 10, 1922.*

That concern is a New York corporation. Its offices always have been in New York City. Practically all its business was done in the United States. Its plant, which was destroyed, was located at Kingsland, New Jersey, where it employed two thousand men (R. 185). The petitioners assail the award to the United States on behalf of that claimant as void and beyond the power of the Commission on the theory that the corporation was not an American national within the meaning of the agreement establishing the Commission. All of the stock of the New York corporation was owned by a Canadian corporation, and the portion of the Canadian corporation's stock held by citizens of the United States varied from 30% to 45% (R. 185-86).

The question whether its losses were the proper subject of an award involved questions of fact and

also interpretation of the Executive Agreement and came before the Commission for decision in the regular course of its duties. In every claim the Commission was required to determine the nationality of the claimant.

The argument that the Commission did not have power to decide questions of fact and law respecting nationality by decisions "binding on the two governments" would result in leaving the question of nationality to be settled in every case by separate diplomatic agreement and then to be litigated in the courts.

The full facts affecting nationality were disclosed to the State Department and to Germany many years ago (R. 185-86). The State Department espoused the claim (R. 186). Not until December 7, 1936, nine years after the United States filed the claim with the Commission, and after thousands of pages of evidence had been taken respecting its merits, did Germany raise the question of nationality. On December 7, 1936 (after the first argument on the fraud petition for rehearing) Germany filed a motion raising the point; on March 18, 1937, the German Agent withdrew his motion; on April 27, 1937, he renewed it (R. 183). After both Agents had filed briefs on the point, the Commission denied the motion (R. 195).

The propriety of the award is so amply supported by the authorities cited and discussed in the opinion of the American Commissioner of October 30, 1939 (R. 182-94), which was concurred in by the Umpire (R. 195), that no useful purpose is served in reviewing those authorities here.

Petitioners' brief merely recites the same cases cited before the Commission and discarded by the Umpire and the American Commissioner as inapplicable to the situation presented by the claim.

POINT THREE

The Commission's decisions on these questions are binding on petitioners.

In years past there was a tendency to examine collaterally the jurisdiction of a judicial tribunal, even though it had considered the jurisdictional point and itself decided the question. That subject has recently been clarified. *Stoll* v. *Gottlieb,* 305 U. S. 165 (1938); *Treinies* v. *Sunshine Mining Co.,* 308 U. S. 66 (1939); *Chicot County Drainage District* v. *Baxter State Bank,* 60 St. Ct. 317 (1940).

In *Stoll* v. *Gottlieb,* after a District Court had erroneously held, in a decision on the question, that it had jurisdiction over the subject matter of a case before it, this Court refused to allow its judgment to be attacked collaterally. This situation is analogous.

That the Commission had the power to pass on questions of interpretation of the Executive Agreement of August 10, 1922 to determine its own powers cannot be doubted and was conceded by the German Agent (R. 88). Not only did the Commission have that power, but decision of the questions was solely for it. With reference to a determination of the citizenship of a claimant in the American-Venezuelan arbitration of 1903, the American-Venezuelan Commission stated:

> "Hence, the Commission, as the sole judge of its jurisdiction must in each case determine for itself the question of such citizenship upon the evidence submitted in that behalf." (*Flutie*

cases—Ralston, Report of Venezuelan Arbitrations of 1903 (Wash., 1904), pp. 38, 41.)

See also *The Betsey,* 4 Moore, International Adjudications (1931) 81, 85, 182, 186; *Hargous (U. S.)* v. *Mexico* (1839), 2 Moore, International Arbitrations p. 1267; *Rudloff (U. S.)* v. *Venezuela,* Ralston, Report of Venez. Arb., pp. 182, 185; Greco-Turkish Agreement of December 1, 1926, Permanent Court of International Justice Advisory Opinion No. 16 (August 18, 1928), Public. Ser. B., No. 16, pp. 20, 21.

The Commission's decisions interpreting the Executive Agreement, like its decisions on the validity and amount of claims, are decisions which each Government is bound to accept as final and binding under the provisions of Article VI of the Executive Agreement (R. 18). Secretary of State Evarts came to the same conclusion with respect to the powers of the American-Spanish Commission under the Convention of February, 1871. In reference to the validity of judgments of naturalization of certain American claimants, the Secretary of State pointed out that the Commission's decisions on the *"reach of the jurisdiction accorded by the convention of 1871"* were final and conclusive on both Governments (3 Moore, International Arbitrations, 2599-2600). See also the opinion of Secretary of State Webster with reference to the United States-Mexican Claims Commission established pursuant to the Convention of 1839 (2 *id.,* pp. 1241, 1242).

The Mixed Claims Commission is a judicial tribunal established by the United States and Germany, pursuant to a treaty, and its creation was ratified and confirmed by the Settlement of War Claims Act. Its decisions on these questions raised before it are

binding on the two Governments, and consequently on private persons whose only claims are through one of said Governments.

Conclusion

The decision below was obviously right. The reasons assigned for it are invulnerable. There is no case to the contrary and no conflict. The decision could not have been otherwise, without disregarding a long line of decisions of this Court. The law is settled. In addition to the grounds assigned by the courts below, the petitioners' case could not possibly have succeeded even if the courts had formed their own judgment as to the propriety of these awards.

It is not out of place to note that this litigation, and the resultant delay in payment of these awards, are causing the beneficiaries of these awards (unless Germany resumes payments on her bonds) approximately three thousand dollars per day in loss of use of the money, computed at the rate prescribed in the Settlement of War Claims Act, a total to date of over three-quarters of a million dollars. The respondent, acting on behalf of all the sabotage awardholders, has done its best to expedite the final decision, with no help from the petitioners. Its motions for leave to intervene, and for summary judgment, were both met with attempts at postponement. When the appeal from the District Court was taken, it was the respondent who arranged for immediate certification and printing of the record and moved to advance in the Court of Appeals. To stay the mandate in that court (which has gone down), these petitioners should have filed their petitions for certiorari

in thirty days (by July 3rd). They were filed August 29th. There has been no evidence of any desire on the part of the petitioners to expedite a final decision. They have relied on the reluctance of the Treasury to pay the awards in the face of litigation, and never applied for a temporary injunction, for which a bond would have been required. It is but natural that the sabotage awardholders protest at having this litigation, which they are convinced is wholly without merit, carried further at their expense.

The petitions for certiorari should be denied.

Respectfully submitted,

WILLIAM D. MITCHELL,
Attorney for Respondent,
Lehigh Valley Railroad Company

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